

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

FILED

KIMBERLY K. BULL,

Plaintiff,

v.

GROUP LONG TERM DISABILITY
PLAN FOR TFE, INC.,

TFE, INC.,

and

UNUM LIFE INSURANCE COMPANY
OF AMERICA

Defendants.

No. 08-0891

2008 NOV 16 P 3:47

U.S. DISTRICT COURT
EASTERN DIST. TENN.

COMPLAINT

Comes the Plaintiff Kimberly K. Bull, by and through counsel, and for her Complaint against Defendants Group Long Term Disability Plan for TFE, Inc., and Unum Life Insurance Company of America, states and avers as follows:

1. The Plaintiff Kimberly K. Bull (hereinafter "Bull") is a citizen and resident of Anderson County, Tennessee.
2. The Defendant Group Long Term Disability Plan for TFE, Inc. (hereinafter "Plan") may be sued and served with process by serving its registered agent, TFE, Inc., 1114 Ridgecrest Ave., North Augusta, SC 29841-3070, pursuant to 29 U.S.C. § 1132(d)(1).
3. The Defendant TFE, Inc. (hereinafter "TFE"), is the Plan Administrator and may be sued and served with process by serving its registered agent, TFE, Inc., 1114 Ridgecrest Ave., North Augusta, SC 29841-3070, pursuant to 29 U.S.C. § 1132(d)(1).

1

EXHIBIT

A

08 NOV -7 AM 8:28

FILED
CLERK OF COURT

4. The Defendant Unum Life Insurance Company of America (hereinafter "Unum") is a foreign insurance company properly registered with the Tennessee Secretary of State to conduct business in Tennessee and may be served through its registered agent for service of process, CT Corporation, 800 S. Gay Street, Suite 2021, Knoxville, TN 37929.

5. The Plaintiff Bull brings this action to recover benefits due her for Long Term Disability payments under the terms of the Plan pursuant to the provisions of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (hereinafter "ERISA"), and particularly 29 U.S.C. § 1132(a)(1)(B).

6. Jurisdiction over plaintiff's claim is conferred on this Honorable Court pursuant to 29 U.S.C. § 1132(e)(1).

7. Venue over Plaintiff's claim is conferred on this Honorable Court pursuant to 29 U.S.C. § 1132(e)(2).

8. The Plaintiff Bull is, and at all times relevant to this action was, a "participant" in the Plan as defined by 29 U.S.C. § 1002(7).

9. The Defendant Plan is an "employee welfare benefit plan" as defined by 29 U.S.C. § 1002(1).

10. The Defendant Unum is a "party in interest" as defined by 29 U.S.C. § 1002(14)(A) and a "named fiduciary" as defined by 29 U.S.C. § 1102(a)(2)(A) which has the authority to control and manage the operation and administration of the plan pursuant to 29 U.S.C. § 1102(a)(1).

11. TFE, Inc. is a "party in interest" as defined by 29 U.S.C. § 1002(14)(C) and the "administrator" as defined by 29 U.S.C. § 1002(16)(A) and (B). At all times relevant to this

Complaint, TFE, Inc. (hereinafter "TFE") was the "employer" of Plaintiff Bull as defined by 29 U.S.C. §1002(5).

12. Bull was a Remote Handling Technician and was in good to excellent health until July 25, 2007 when she became disabled by arthralgias/myalgias, degenerative disc disease, GERD, among other afflictions.

13. Bull's symptoms progressed rapidly and caused her to have difficulty standing and to lose her grip in her right hand.

14. Bulls employer, TFE, attempted to accommodate Plaintiff's medical problems, nonetheless, Bull continued to suffer from her maladies and was unable to continue to work.

15. Bull's last day of work for TFE was on July 25, 2007, and after that date, Bull received short term disability for a period of time.

16. On or about April 12, 2008, Bull's short-term disability expired, and Bull subsequently filed a claim for long term disability benefits under the Plan.

17. On or about April 14, 2008, Unum denied Bull's long term disability benefits.

18. On or about August 7, 2008, Unum denied Bull's appeal for long term disability benefits under the Plan.

19. Unum has failed to provide long term disability benefits due Bull under the Plan.

20. Unum, TFE and the Plan have failed to discharge its fiduciary duties with respect to the Plan solely in the interest of plan participants as required by 29 U.S.C. § 1104(a)(1).

21. Unum and TFE breached their fiduciary duties by failing to consider the Social Security file of Mrs. Bull.

22. Defendants' decision to deny Ms. Bull's long term disability benefits under the Plan was arbitrary and capricious. Further, in ignoring relevant information, Defendant's denied Ms. Bull a full and fair review during the appeal process. In addition, Defendants had a financial incentive to find that Ms. Bull was capable of at least sedentary work.

23. Defendants have failed to provide long term disability benefits due Ms. Bull under the Plan. In addition, Defendants made the determinations even though they had not followed proper procedure under the policy – thus denying Ms. Bull her due process rights under the Plan. Furthermore, Unum is both a party responsible for paying claims under the Plan and an administrator of the plan, thus a conflict of interest exists in the decision-making process.

WHEREFORE, premises considered, Kimberly K. Bull respectfully requests this Honorable Court for the following:

A. A declaration that Unum has breached its fiduciary duties, responsibilities, and obligations imposed upon it under ERISA.

B. A declaration that Kimberly K. Bull is disabled within the meaning of the Plan and is entitled to long term disability benefits from the Plan.

C. Order Unum to pay Kimberly K. Bull back benefits due under the Plan.

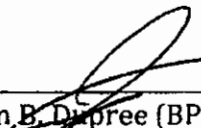
D. Order Unum to pay prejudgment interest at the rate set by law on the disability benefits wrongfully withheld from Kimberly K. Bull or, if the amount is greater,

order Unum to pay her the amounts it has earned on the money wrongfully withheld from her as other equitable relief.

E. Order Unum to pay Kimberly K. Bull the costs of her suit and reasonable attorney fees.

F. Grant such other and further relief to which Kimberly K. Bull is entitled.


Respectfully submitted this 4th day of March, 2008.



John B. Dupree (BPR# 017339)
Attorney for the Plaintiff
McGehee, Stewart, Cole, Dupree & Roper, P.A.
709 Market Street
Knoxville, Tennessee 37902
(865) 281-8400

COST BOND

I acknowledge myself surety for all costs, taxes, and damages in this case in accordance with Tenn. Code Ann. ' 20-12-120.

BY: 

John B. Dupree, BPR # 017339
McGehee, Stewart, Cole, Dupree & Roper, P.A.
709 Market Street
Knoxville, Tennessee 37902
(865) 281-8400

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

KIMBERLY K. BULL,
Plaintiff,

v.

GROUP LONG TERM DISABILITY
PLAN FOR TFE, INC., TFE, INC.,
and UNUM LIFE INSURANCE
COMPANY OF AMERICA,
Defendants.

No. 08-0891

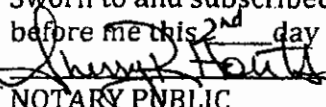
AFFIDAVIT

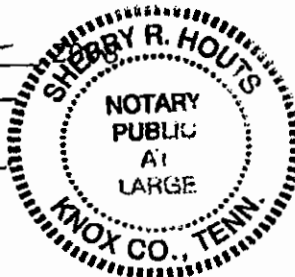
John B. Dupree, after first being duly sworn according to law, deposes and says as follows:

1. I am the attorney of record for Kimberly K. Bull in the above-styled cause.
2. On November 18, 2008, I mailed, certified-return receipt requested, a certified copy of the original summons and a copy of the filed Complaint to the Defendants TFE, Inc. and Group Long Term Disability Plan for TFE, Inc.. Thereafter, I received the return receipt signed by someone at their offices at 1114 Ridgecrest Avenue, North Augusta, South Carolina, 29841, saying they have received the material referred to herein on November 21, 2008. The return receipt is attached to this Affidavit as an exhibit hereto.
3. I fully complied with the provisions of Rules 4.03 and 4.04, Tennessee Rules of Civil Procedure, as it pertains to service by mail.

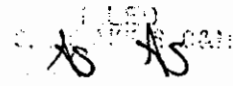
Further, affiant saith not.


John B. Dupree

Sworn to and subscribed
before me this 2nd day of December

NOTARY PUBLIC
My Commission expires 8/10/10



08 DEC -5 AM 10:00



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>[Signature]</i></p>	
<p>1. Article Addressed to:</p> <p>TFE, Inc. and Group Long Term Disability Plan for TFE, Inc. 1114 Ridgcrest Ave. North Augusta, SC 29841-3070</p>		<p>B. Received by (Printed Name) C. Date of Delivery</p> <p>LARIDA ALLEN 2/11/04</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>7008 0150 0001 2294 1699</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>PS Form 3811, February 2004</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

08 DEC -5 AM 10:03

FILED
U.S. MAIL
U.S. POSTAL SERVICE

RECEIVED
11-7-08 AS
Clerk & Master

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

KIMBERLY K. BULL,

Plaintiff,

v.

No. 08-0891

GROUP LONG TERM DISABILITY
PLAN FOR TFE, INC.,

TFE, INC.,

and

UNUM LIFE INSURANCE COMPANY
OF AMERICA

Defendants.

SUMMONS

TO THE DEFENDANT:

You are hereby summoned and required to serve upon John B. Dupree, Plaintiff's attorney, whose address is McGehee, Stewart, Cole, Dupree & Roper, P.A., 709 Market Street, Knoxville, TN 37902, an Answer to the Complaint herewith served upon you within thirty (30) days after service of this Summons and Complaint, exclusive of the day of service. If you fail to do so, judgment by default can be taken against you for the relief demanded in the Complaint.

Issued and tested this 17th day of November 2008.

CLERK

Rohena M. Hudson
DEPUTY CLERK

08 DEC -5 AM 10:00

FILED
12/16/08
AS AS

NOTICE

TO THE DEFENDANT:

Tennessee law provides a Four Thousand Dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

TO THE PROCESS SERVER: Defendant, Group Long Term Disability Plan for TFE, Inc. can be served c/o Registered Agent for Service of Process through TFE, Inc., 1114 Ridgecrest Avenue, North Augusta, South Carolina 29841-3070

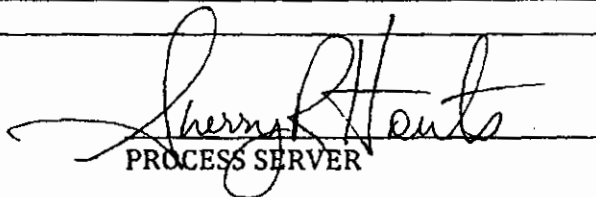
RETURN

I received this Summons on the 18th day of November, 2008.

I hereby certify and return that on the 21st day of November, 2008, I:

☒ served this Summons and a Complaint on Defendant, Group Long Term Disability Plan for TFE, Inc. in the following manner: by certified return-receipt mail postage pre-paid

☐ failed to serve this Summons within thirty (30) days after its issuance because:


PROCESS SERVER

RECEIVED

11-7-08
Clerk & Master

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

KIMBERLY K. BULL,

Plaintiff,

v.

No. 08-0891

GROUP LONG TERM DISABILITY
PLAN FOR TFE, INC.,

~~TFE, INC.~~

and

UNUM LIFE INSURANCE COMPANY
OF AMERICA

Defendants.

SUMMONS

TO THE DEFENDANT:

You are hereby summoned and required to serve upon John B. Dupree, Plaintiff's attorney, whose address is McGehee, Stewart, Cole, Dupree & Roper, P.A., 709 Market Street, Knoxville, TN 37902, an Answer to the Complaint herewith served upon you within thirty (30) days after service of this Summons and Complaint, exclusive of the day of service. If you fail to do so, judgment by default can be taken against you for the relief demanded in the Complaint.

Issued and tested this 17 day of November 2008.

CLERK

Cherise Hudson
DEPUTY CLERK

08 DEC -5 AM 10:00

FILED
11-10-08
AS AS

NOTICE

TO THE DEFENDANT:

Tennessee law provides a Four Thousand Dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

TO THE PROCESS SERVER: Defendant, TFE, Inc. can be served with process at TFE, Inc., 1114 Ridgecrest Avenue, North Augusta, South Carolina 29841-3070

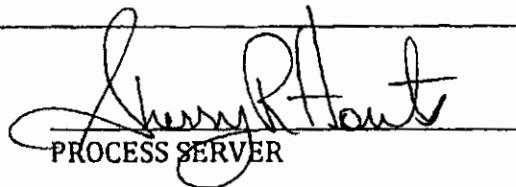
RETURN

I received this Summons on the 18th day of November, 2008.

I hereby certify and return that on the 21st day of November, 2008, I:

☒ served this Summons and a Complaint on Defendant, TFE, Inc, in the following manner: by certified return-receipt mail postage pre-paid

☐ failed to serve this Summons within thirty (30) days after its issuance because:


PROCESS SERVER



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-1131

December 2, 2008

Unum Life Insurance Co. Of America
800 S. Gay Street, Ste 2021, % C T Corp.
Knoxville, TN 37929-9710
NAIC # 62235

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7008 1140 0002 5992 1694
Cashier # 6386

Re: Kimberly K. Bull V. Unum Life Insurance Co. Of America

Docket # 08-0891

To Whom It May Concern:

We are enclosing herewith a document that has been served on this department on your behalf in connection with the above-styled matter.

I hereby make oath that the attached Disability Complaint was served on me on November 24, 2008 by Kimberly K. Bull pursuant to Tenn. Code Ann. § 56-2-504 or § 56-2-506. A copy of this document is being sent to the Chancery Court of Hamilton County, TN.

Brenda C. Meade
Designated Agent
Service of Process

Enclosures

cc: Chancery Court Clerk
Hamilton County
201 East Seventh Street, Rm 300
Chattanooga, Tn 37402

08 DEC -8 AM 10:16

Service of Process 615.532.5260

FILED
CLERK OF COURT
JAN 13 2009
CLERK OF COURT

RECEIVED

11-7-08 AS

Clerk & Master

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

KIMBERLY K. BULL,

Plaintiff,

v.

No. 08-0891

GROUP LONG TERM DISABILITY
PLAN FOR TFE, INC.,

TFE, INC.,

and

UNUM LIFE INSURANCE COMPANY
OF AMERICA

Defendants.

SUMMONS

TO THE DEFENDANT:

You are hereby summoned and required to serve upon John B. Dupree, Plaintiff's attorney, whose address is McGehee, Stewart, Cole, Dupree & Roper, P.A., 709 Market Street, Knoxville, TN 37902, an Answer to the Complaint herewith served upon you within thirty (30) days after service of this Summons and Complaint, exclusive of the day of service. If you fail to do so, judgment by default can be taken against you for the relief demanded in the Complaint.

Issued and tested this 17 day of November 2008.

CLERK

Charles J. Dupree
DEPUTY CLERK

08 DEC -8 AM 10:15

FILED
CLERK & MASTER
AS

NOTICE

TO THE DEFENDANT:

Tennessee law provides a Four Thousand Dollar (\$4,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

SERVICE INFORMATION

TO THE PROCESS SERVER: Defendant, UNUM PROVIDENT CORPORATION can be served c/o Registered Agent for Service of Process through CT Corporation, 800 S. Gay Street, Suite 2021, Knoxville, TN 37929.

RETURN

I received this Summons on the ____ day of _____, 2000.

I hereby certify and return that on the ____ day of _____, 2000, I:

☐ served this Summons and a Complaint on Defendant, _____, in the following manner: _____

☐ failed to serve this Summons within thirty (30) days after its issuance because: _____

PROCESS SERVER

IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE

KIMBERLY K. BULL,)	
)	
Plaintiff,)	
v.)	No. 08-0891
)	
GROUP LONG TERM DISABILITY)	
PLAN FOR TFE, INC.,)	
)	
TFE, Inc.,)	
)	
and)	
)	
UNUM LIFE INSURANCE COMPANY)	
OF AMERICA)	
)	
Defendants.)	

NOTICE OF REMOVAL

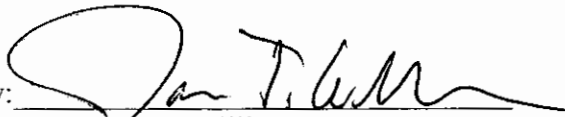
To:

Lee Akers, Clerk and Master
Chancery Court, Hamilton County, Tennessee

Notice is hereby given, pursuant to 28 U.S.C. §1446(d), that the Defendants in the above-styled cause, without waiving any defenses, have filed in the United States District Court for the Eastern District of Tennessee, Southern Division, a Notice of Removal, a copy of which is attached hereto as **Exhibit 1**, seeking to remove this action to the United States District Court for the Eastern District of Tennessee. Accordingly, pursuant to 28 U.S.C. §1446(d), this Court is precluded from taking any further action with respect to this cause unless and until the same is remanded by order of the United States District Court for the Eastern District of Tennessee.

Respectfully submitted,

MILLER & MARTIN PLLC

By: 

James T. Williams

B.P.R. #16341

Stephanie R. Barnes

B.P.R. #25255

Suite 1000, Volunteer Building

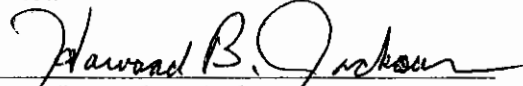
832 Georgia Avenue

Chattanooga, Tennessee 37402

Telephone: (423) 756-6600

Facsimile: (423) 785-8480

*Attorneys for Unum Life Insurance Company of
America*

By: 

Howard B. Jackson

B.P.R. #021316

**WIMBERLY LAWSON SEALE WRIGHT &
DAVES, PLLC**

550 Main Avenue, Suite 900

P.O. Box 2231

Knoxville, TN 37901-2231

Telephone: (865) 546-1000

Facsimile: (865) 546-1001

*Attorneys for Group Long Term Disability Plan
For TFE, Inc. and TFE, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of the foregoing pleading has been served upon all counsel at interest in this case, by delivering a true and exact copy to the offices of counsel of record shown at the addresses below, by placing a copy in the United States mail, postage pre-paid.

John B. Dupree
McGehee, Stewart, Cole, Dupree & Roper, P.A.
709 Market Street
Knoxville, TN 37902

This 16th day of December, 2008.

MILLER & MARTIN PLLC

By: 